

Pillsbury

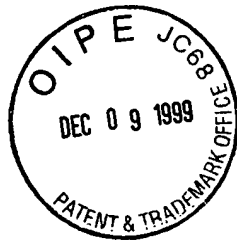


Madison &
Sutro LLP

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barufka_j@pillsburylaw.com



December 9, 1999

**Cushman Darby & Cushman
Intellectual Property Group**

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VIA COURIER

Honorable Commissioner of Patents and Trademarks
U.S. Patent and Trademark Office
Washington, D.C. 20231

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Re: Protest Under 37 CFR 1.291(a)
(filed December 8, 1999)
Concerning Reissue Application Serial No. 09/267,025 for
Reissue of U.S. Patent No. 5,609,938

Petition for the Institution of Public Use Proceedings Under
37 CFR 1.292
(filed December 8, 1999 attn Office of Petitions)
Concerning Reissue Application Serial No. 09/267,025 for
Reissue of U.S. Patent No. 5,609,938

Our Ref: 20835/259165

Dear Sir:

Yesterday, photocopies of the Declaration of Abigail Parker, dated July 17, 1999 were filed as Exhibit 5 to the Protest and Exhibit 5 to the Petition referenced above. Exhibit 5 included eleven original color photographs (as Exhibit A) and b & w photocopies of a portion of a sample of a vinyl Gatorade advertisement mounted on flexible plastic and a copy of a related handwritten note (as Exhibit B). The actual portion of the sample was filed yesterday as Exhibit D to the Affidavit of Roland Hill. See attached copies of our letters filed yesterday.

The original copy of the Parker Declaration and Exhibit B (color copies) were unavailable for filing with the Protest yesterday. (They were en route to us from England and only received today. See attached copy of the airbill.) Nevertheless, we proceeded with filing the Protest and Petition yesterday because we believed time was of the essence.

Enclosed herewith is the original copy of the Parker Declaration and Exhibit B (color photocopies) plus Exhibit A for inclusiveness. We request that the Declaration and Exhibit B be included

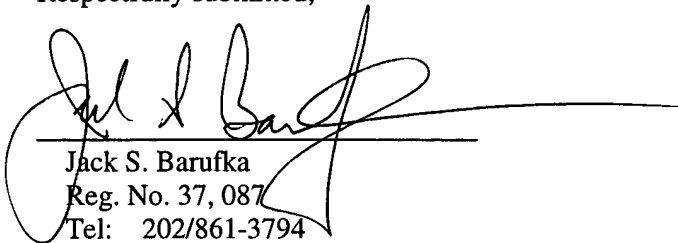
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Honorable Commissioner of Patents and Trademarks
December 9, 1999
Page 2

with the Protest documents filed yesterday (which incorporated by reference the evidence in the Petition).

A copy of this letter with attachments was served today on counsel for the applicant, Thomas C. Feix, Esq., Feix & Feix, 241 North San Mateo Drive, San Mateo, CA 94401, via FedEx for next business day delivery.

Respectfully submitted,



Jack S. Barufka
Reg. No. 37, 087
Tel: 202/861-3794
Fax: 202/822-0944

Pillsbury

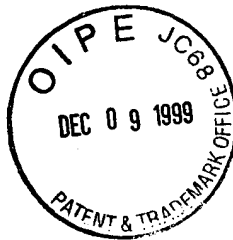


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December 8, 1999

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U.S. Patent and Trademark Office
Washington, D.C. 20231

Re: Protest Under 37 CFR 1.291(a)
Concerning Reissue Application SN 09/267,025
Our Ref: 20835/259165

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Dear Sir:

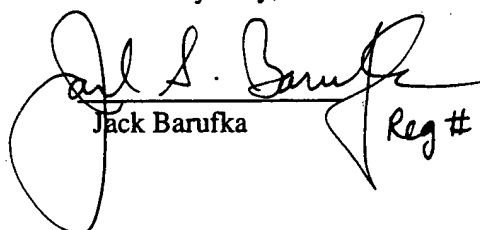
Enclosed please find a copy of each of the following:

- (1) Protest Under 37 CFR 1.291(a) (which incorporates by reference the evidence in the Petition for Institution of Public Use Proceedings Under 37 CFR 1.292 filed under separate cover today attention the PTO Office of Petitions);
- (2) Anticipatory physical prior art (a Gatorade advertisement assembly designated Exhibit 1);
- (3) Supplemental photographs A, B, C of Exhibit 1 for the convenience of the PTO;
- (4) Affidavits of Linda Icard, Benjamin Icard, Roland Hill and Patrick Henrietta (respectively designated Exhibits 2-4, 6);
- (5) Declaration of Abigail Parker (Exhibit 5);
- (6) A bound set of items (1) through (5) for handy reference. (Because of size, the Linda Icard and Benjamin Icard Affidavits each comprise two volumes—the Affidavit and the exhibits cited therein.)

Please advise if you have any questions by contacting me (202/861-3794).

Thank you.

Yours very truly,


Jack Barufka
Reg # 37,087



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Ottawa, Ontario
K1H 1G9
de SEL 200 201614349307
% reference 006406619



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Administration de Grac

Name and Address of Addressee Nom et Adresse du destinataire

Mr Bill King
Cassidy, Presque, Madison & Suro
1100 New York Ave, N.W.
Ninth Floor, East Tower

town and
postcode WASHINGTON D.C. 20005
city USA 2025613000
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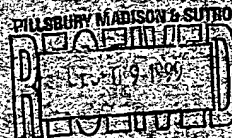
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